



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WALSHONER CARR
ATTORNEY GENERAL**

September 28, 1964

Honorable Cecil M. Pruett
County Attorney
Hutchison County
Borger, Texas

Opinion No. C-321

Re: In the event that the office of County School Superintendent be abolished by a vote of the people under Article 2688e, and a person at the same election is elected to fill a vacancy caused by the death of the school superintendent, would it be mandatory that a salary be paid to the elected person, if any, for the unexpired term of the deceased?

Dear Mr. Pruett:

Your letter requesting a formal opinion of this office reads in part as follows:

"On the 27th day of August, A.D. 1964, our County School Superintendent, Maurice Wilbert Graves, died. He was duly elected by the people of this County and his present office will continue until 1966. At the present time under Article 2688e Vernon Annotated Civil Statutes, petitions are being circulated for the purpose of calling an election to abolish this office. This election will in all probability be held with the general election in November, providing the necessary twenty-five per cent qualified voters sign this petition. It is also contemplated that some person, or persons, will file for this elected job, although it is the feeling by most of the people in our community that the office of County School Superintendent will be abolished by a vote of the people."

Your question in regard to these facts may be stated

as follows:

"If the office is abolished and, if, at the same time, a person is elected to serve, would it be mandatory that the office be continued and that a salary be paid to the person elected for the unexpired term of the deceased?"

The minimum compensation of County School Superintendents has been set by the Legislature, Article 2700, Vernon's Civil Statutes. The local county officials cannot deny this compensation so long as the office continues to exist.

The relevant inquiry, therefore, becomes: "When will the office expire?"

Article 2688e reads in part as follows:

"Sec. 1 . . .

"(b) Where the majority of the qualified electors approve the abolition of the office of county superintendent, the duties . . . vest in the county judge in ex officio capacity upon expiration of the current term of that office. . . .

"Sec. 2 . . . not more than one such election to abolish the office of superintendent or ex officio superintendent may be called during any term of office of the incumbent. . . and that not during the year that a regular election for the office is being held." (Emphasis added).

The clear and unambiguous intent of these Sections is to prevent the office of County Superintendent from being discontinued summarily, and thereby to assure certainty of tenure for those who seek the office.

In view of the language of Section 1 (b) of Article 2688e, assuring that one who stands for office will serve his full term; and of the general scheme evidenced by Section 2 of Article 2688e which assures that the office will not be abolished while he seeks election; clearly, the office in the instant case must be continued until the end of the current term of that office.

Your question is, therefore, answered affirmatively. If the office of County School Superintendent is abolished

Honorable Cecil M. Pruett, page 3 (C- 321)


under Article 2688e, and if, at the same time, a person is elected to serve out the term of the deceased incumbent, a salary must be paid to the person so elected until the end of said term. Of course the person elected County Superintendent must qualify and perform the duties of the office.

SUMMARY

If the office of County School Superintendent is abolished under Article 2688e, Vernon's Civil Statutes, and if, at the same time, a person is elected to serve out the term of the deceased incumbent, a salary must be paid to the person so elected until the end of said term. Of course the person elected County Superintendent must qualify and perform the duties of the office.

Yours very truly,

WAGGONER CARR
Attorney General

By: 
Larry Craddock, Jr.
Assistant

LC:bk

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
H. Grady Chandler
Robert Norris
Roy Johnson
Jim Briscoe

APPROVED FOR THE ATTORNEY GENERAL
By: Roger Tyler